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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 MARVIN ESCOBAR,

11 Plaintiff(s),

12 v.

13 AMERICA FINCO VELOCITY
14 INVESTMENT, LLC,

15 Defendant(s).

Case No.: 2:19-cv-01311-JAD-NJK

ORDER

16 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to
17 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a
18 complaint. Docket No. 1-1.

19 **I. *In Forma Pauperis* Application**

20 Plaintiff filed the affidavit required by § 1915(a). Docket No. 1. Plaintiff has shown an
21 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in*
22 *forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a).

23 **II. Screening the Complaint**

24 **A. Standards**

25 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
26 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
27 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
28 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

1 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
2 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
3 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
4 F.3d 1103, 1106 (9th Cir. 1995).

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
6 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
7 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
8 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
9 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
10 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
11 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
12 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
13 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
14 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
15 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
16 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
17 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
18 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
19 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
20 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

21 **B. Federal Question Jurisdiction**

22 Federal courts are courts of limited jurisdiction and possess only that power authorized by
23 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C.
24 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
25 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
26 federal law creates the cause of action or where the vindication of a right under state law
27 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
28 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal question jurisdiction exists is based on the

1 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a federal
2 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc.*
3 *v. Williams*, 482 U.S. 386, 392 (1987).

4 Here, Plaintiff’s complaint appears to allege a civil rights violation because his funds were
5 garnished after the Justice Court of North Las Vegas entered a judgment and executed a writ of
6 garnishment. Docket No. 1-1 at 4, 19-25. However, Plaintiff has not identified any federal law
7 under which he seeks to proceed. Accordingly, the Court finds that Plaintiff has not established
8 federal question jurisdiction.

9 **C. Diversity Jurisdiction**

10 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil
11 actions in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000”
12 and where the matter is between “citizens of different states.”

13 Here, Plaintiff’s complaint indicates that the basis of the Court’s jurisdiction is a diversity
14 claim. Docket No. 1-1 at 3. However, Plaintiff fails to identify Defendant’s citizenship and his
15 claim involves a garnishment of \$9,013.81. *Id.* at 1-5, 22-24, 27. Accordingly, the Court finds
16 that Plaintiff has not established diversity jurisdiction.

17 **III. Conclusion**

18 Accordingly, **IT IS ORDERED** that:

- 19 1. Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be
20 required to pay the filing fee of four hundred dollars (\$400.00). Plaintiff is permitted
21 to maintain this action to conclusion without the necessity of prepayment of any
22 additional fees or costs or the giving of a security therefor. This order granting leave
23 to proceed *in forma pauperis* shall not extend to the issuance and/or service of
24 subpoenas at government expense.
- 25 2. The Clerk’s Office is **INSTRUCTED** to file Plaintiff’s complaint on the docket.
- 26 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until
27 **September 16, 2019**, to file an amended complaint. If Plaintiff chooses to amend the
28 complaint, Plaintiff is informed that the Court cannot refer to a prior pleading (i.e., the

1 original complaint) in order to make the amended complaint complete. This is because,
2 as a general rule, an amended complaint supersedes the original complaint. Local Rule
3 15-1(a) requires that an amended complaint be complete in itself without reference to
4 any prior pleading. Once a plaintiff files an amended complaint, the original complaint
5 no longer serves any function in the case. Therefore, in an amended complaint, as in
6 an original complaint, each claim and the involvement of each Defendant must be
7 sufficiently alleged.

- 8 **4. Failure to comply with this order will result in the recommended dismissal of this**
9 **case.**

10 IT IS SO ORDERED.

11 Dated: August 16, 2019

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14 Nancy J. Koppe
15 United States Magistrate Judge
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